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*Attorneys for Defendants*

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

THE AVANTI DOOR GROUP, INC.,  
formerly known as E.M. Allen Supply,

Plaintiff,

Case No.

vs.

**DEFENDANTS' NOTICE OF  
REMOVAL**

GENWORTH LIFE AND ANNUITY  
INSURANCE COMPANY, formerly, FIRST  
COLONY LIFE INSURANCE; GENWORTH  
FINANCIAL, and DOE Defendants I through  
V,

Defendants.

Defendants Genworth Life and Annuity Insurance Company, as successor in interest to First Colony Life Insurance, and Genworth Financial, Inc. (collectively "Genworth") hereby remove this action from the Eighth Judicial District Court, in Clark County, Nevada, to the United States District Court for the District of Nevada. This Court has diversity jurisdiction over this matter pursuant to 28 U.S.C. § 1332, which is the basis of Genworth's removal.

**I. Introduction**

This case concerns an insurance policy that insured the life of Plaintiff's former President, Craig A. Leonard, and Plaintiff's failure to pay the 2009 policy premium. Plaintiff's complaint admits that it failed to pay the premium, but alleges that it is entitled to recover the face amount of the Policy, \$500,000.00, despite the non-payment.

Based on these allegations, Plaintiff filed its complaint against Genworth in state court, asserting claims for breach of contract, breach of the implied covenant of good faith and fair dealing, and unjust enrichment. Genworth is removing this action based on diversity jurisdiction as the parties have diverse citizenship and the allegations in the complaint establish that the amount in controversy exceeds \$75,000.

## **II. This Court Has Diversity Jurisdiction Under 28 U.S.C. § 1332**

### **A. There Is Diversity Of Citizenship**

1. Plaintiff alleges that it is a Nevada Corporation. *See* Ex. A, Compl. at ¶ I.

2. Defendant Genworth Life and Annuity Insurance Company, successor in interest to First Colony Life Insurance, is a Virginia corporation with its principal place of business in Richmond, Virginia.

3. Defendant Genworth Financial is a Delaware corporation with its principal place of business in Richmond, Virginia.

### **B. The Amount In Controversy Exceeds \$75,000**

Pursuant to 28 U.S.C. § 1332(a), in order to establish diversity jurisdiction “the matter in controversy [must] exceed[] the sum or value of \$75,000, exclusive of interest and costs.” “The amount in controversy is simply an estimate of the total amount in dispute, not a prospective assessment of [the] defendant’s liability.” *Lewis v. Verizon Commc’ns, Inc.*, 627 F.3d 395, 400 (9th Cir. 2010) (citing *McPhail v. Deere & Co.*, 529 F.3d 947, 956 (10th Cir. 2008)).

The allegations in the Plaintiff’s complaint establish that the amount in controversy in this case exceeds \$75,000. In particular, Plaintiff alleges that it purchased a life insurance policy from the Defendants “with a payout provision of \$500,000.” Ex. A, Compl. at ¶ V. Plaintiff further alleges that it has “sustained damages in the amount of \$500,000.00 by virtue of Defendants’s [sic] breaches of the life insurance contract.” *Id.* at ¶ LVI. Accordingly, the amount in controversy easily exceeds the \$75,000 threshold for purposes of diversity jurisdiction.

1 **III. This Removal Is Timely**

2 1. Plaintiff filed this action in the District Court, Clark County, Nevada on October  
3 14, 2014.

4 2. Plaintiff served Genworth on October 28, 2014, through the State of Nevada  
5 Commissioner of Insurance.

6 3. This notice is being filed on November 21, 2014. Thus, this notice is timely as it is  
7 within the 30-day period for removal set forth in 28 U.S.C. § 1446.

8 **IV. Genworth Has Met All Other Requirements For Removal**

9 1. This Court has diversity jurisdiction over this matter pursuant to 28 U.S.C § 1332.

10 2. Removal is proper under 28 U.S.C. § 1441(b) because neither of the Genworth  
11 Defendants are citizens of Nevada.

12 3. Genworth has attached copies of all process, pleadings, and orders on file with the  
13 State Court as of the date of this Notice of Removal as Exhibit A to this notice.

14 4. Genworth has also concurrently filed a copy of this notice in the Eighth Judicial  
15 District Court for Clark County, Nevada.

16 5. Genworth has served a copy of this notice upon Plaintiff's counsel.

17 RESPECTFULLY SUBMITTED this 21st day of November, 2014.

18 LEWIS ROCA ROTHGERBER LLP

19  
20 BY: /s/ Jennifer Hostetler

21 DARREN J. LEMIEUX  
22 Nevada Bar No. 9615  
23 JENNIFER HOSTETLER  
24 Nevada Bar No. 11994  
25 3993 Howard Hughes Parkway  
26 Suite 600  
27 Las Vegas, Nevada 89169

28 *Attorneys for Defendants*

3993 Howard Hughes Pkwy, Suite 600  
Las Vegas, NV 89169-5996

LEWIS ROCA  
ROTHGERBER

**CERTIFICATE OF SERVICE**

I hereby certify that I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrant:

Pursuant to FED. R. CIV. P. 5(b), I hereby further certify that service of **NOTICE OF REMOVAL** was made this date by depositing a copy for mailing, first-class mail, postage prepaid, to the following:

Elizabeth J. Foley  
Elizabeth J. Foley LTD.  
601 S. Rancho, Suite A1  
Las Vegas, NV 89106

DATED this\_21st day of November, 2014.

/s/ Judy Estrada  
LEWIS AND ROCA LLP

3993 Howard Hughes Pkwy, Suite 600  
Las Vegas, NV 89169-5996

**LEWIS ROCA  
| ROTHGERBER**

## EXHIBIT A

BRIAN SANDOVAL  
*Governor*

STATE OF NEVADA

BRUCE H. BRESLOW  
*Director*

SCOTT J. KIPPER  
*Commissioner*



DEPARTMENT OF BUSINESS AND INDUSTRY  
DIVISION OF INSURANCE

2501 East Sahara Avenue, Suite 302  
Las Vegas, Nevada 89104-137  
(702) 486-4009 • Fax (702) 486-4007  
Website: doi.nv.gov  
E-mail: insinfo@doi.nv.gov

October 28, 2014

Genworth Life and Annuity Insurance Company  
Attn: Thomas E. Duffy, Esq.  
6610 West Broad Street  
Richmond, VA 23230

RE: The Avanti Door Group, Inc. formerly known as E. M. Allen Supply vs. Genworth Life  
and Annuity Insurance Company, et al.  
District Court, Clark County, Nevada  
Case No. A-14-708505-C

Dear Mr. Duffy:

Enclosed please find the following documents: Summons - Civil and Complaint and Demand for Jury Trial. These documents have been served upon the Commissioner of Insurance as your attorney for service of process on October 27, 2014.

The appropriate action should be taken immediately, as you may only have 30 days from the date of this service to respond.

If you have any questions regarding this service, please advise.

Sincerely,

SCOTT J. KIPPER  
Commissioner of Insurance

By: Rhonda Kelly  
RHONDA KELLY  
Service of Process Clerk

Enclosures

c: Elizabeth J. Foley, Esq.


**PROOF OF SERVICE**

I hereby declare that on this day I served a copy of the Summons - Civil and Complaint and Demand for Jury Trial upon the following defendant in the within matter, by shipping a copy thereof, via Certified mail, return receipt requested, to the following:

Genworth Life and Annuity Insurance Company  
Attn: Thomas E. Duffy, Esq.  
6610 West Broad Street  
Richmond, VA 23230  
CERTIFIED MAIL NO. 7013 2250 0000 3683 4273

I declare, under penalty of perjury, that the foregoing is true and correct.

DATED this 28<sup>th</sup> day of October, 2014.

  
RHONDA KELLY  
Employee of the State of Nevada  
Department of Business and Industry  
Division of Insurance

RE: The Avanti Door Group, Inc. formerly known as E. M. Allen Supply vs. Genworth Life and Annuity Insurance Company, et al.  
District Court, Clark County, Nevada  
Case No. A-14-708505-C



State of Nevada, Division of Insurance  
This document on which this certificate  
is stamped is a full, true and correct  
copy of the original.

Date: 10/28/14 By: 

BRIAN SANDOVAL  
Governor

STATE OF NEVADA

BRUCE H. BRESLOW  
Director

SCOTT J. KIPPER  
Commissioner



DEPARTMENT OF BUSINESS AND INDUSTRY  
DIVISION OF INSURANCE  
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Las Vegas, Nevada 89104-4137  
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October 28, 2014

Elizabeth J. Foley, Esq.  
Elizabeth J. Foley, Ltd.  
601 S. Rancho Drive, Suite A-1  
Las Vegas, NV 89106

RE: The Avanti Door Group, Inc. formerly known as E. M. Allen Supply vs. Genworth Life and Annuity Insurance Company, et al.  
District Court, Clark County, Nevada  
Case No. A-14-708505-C

Dear Ms. Foley:

The Division received the service of process documents on October 27, 2014 regarding the above-entitled matter. Service has been completed on Genworth Life and Annuity Insurance Company this date and enclosed are the following:

1. A copy of our letter to Genworth Life and Annuity Insurance Company dated October 28, 2014;
2. A certified copy of the Proof of Service dated October 28, 2014; and
3. Your receipt in the amount of \$30.00.

Pursuant to *Nevada Revised Statutes (NRS)* 680A.260, 685A.200, and 685B.050, all documents after initial service of process may be served directly to the party.

If you have any questions regarding this service, please so advise.

Sincerely,

SCOTT J. KIPPER  
Commissioner of Insurance

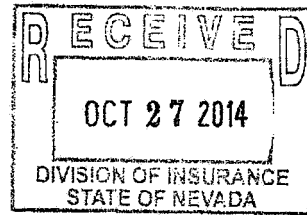
By:

A handwritten signature in cursive script, appearing to read "Rhonda Kelly", written over a horizontal line.  
RHONDA KELLY  
Service of Process Clerk

Enclosures

c: Genworth Life and Annuity Insurance Company

ORIGINAL



**ELIZABETH J. FOLEY**  
NEVADA BAR 1509  
**ELIZABETH J. FOLEY LTD.**  
601 SO. RANCHO, SUITE A1  
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(702)363-2323  
Fax: (702)380-4035  
Email: [Efoleylawyer@gmail.com](mailto:Efoleylawyer@gmail.com)  
Attorney for Plaintiff  
Avanti Door Group, Inc.

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE AVANTI DOOR GROUP, INC, formerly  
known as E. M. Allen Supply )

Plaintiff, )

v. )

GENWORTH LIFE AND ANNUITY  
INSURANCE COMPANY, formerly,  
FIRST COLONY LIFE INSURANCE;  
GENWORTH FINANCIAL,  
and DOE Defendants I through V )

Defendants. )

CASE NO. A-14-708505-C  
DEPT. NO. II

**SUMMONS - CIVIL**

**NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU  
WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS.  
READ THE INFORMATION BELOW.**

**TO THE DEFENDANTS:** A civil Complaint has been filed by the Plaintiff against you for  
the relief set forth in the Complaint.

1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you, exclusive  
of the day of service, you must do the following:

(a) File with the Clerk of this Court, whose address is shown below, a formal written  
response to the Complaint in accordance with the rules of the Court, with the appropriate  
filing fee.

(b) Serve a copy of your response upon the attorney whose name and address is shown  
below.

2. Unless you respond, your default will be entered upon application of the Plaintiff and failure

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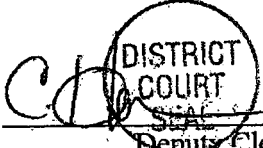
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to so respond will result in a judgment of default against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint.


3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.

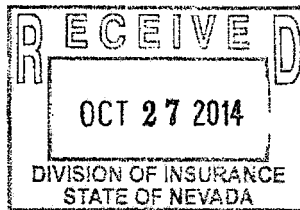
4. The state of Nevada, its political subdivisions, agencies, officers, employees, board members, commission members and legislators each have 45 days after service of this Summons within which to file an Answer or other responsive pleading to the Complaint.

STEVEN D. GRIERSON  
CLERK OF COURT

By:  DISTRICT COURT SEAL  
Deputy Clerk Date OCT 23 2014

Submitted by:

  
ELIZABETH J. FOLEY  
NEVADA BAR: 1509  
601 South Rancho Drive, Suite A-1  
Las Vegas, Nevada 89106



Electronically Filed  
10/14/2014 03:03:24 PM

*Alvin D. Quinn*  
CLERK OF THE COURT

**COMP**  
**ELIZABETH J. FOLEY**  
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Fax: (702)380-4035  
Email: [Efoleylawyer@gmail.com](mailto:Efoleylawyer@gmail.com)  
Attorney for Plaintiff  
Avanti Door Group, Inc.

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

THE AVANTI DOOR GROUP, INC, formerly  
known as E. M. Allen Supply

Plaintiff,

v.

GENWORTH LIFE AND ANNUITY  
INSURANCE COMPANY, formerly,  
FIRST COLONY LIFE INSURANCE;  
GENWORTH FINANCIAL,  
and DOE Defendants I through V

Defendants.

CASE NO. A-14-708505-C  
DEPT. NO. II

**COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff, THE AVANTI DOOR GROUP, INC., (hereafter referred to as "Avanti", by and  
through their attorney ELIZABETH J. FOLEY, hereby complains of Defendants as follows:

**I.**

The Avanti Door Group is a Nevada Corporation formed on or about April 28, 1975.

**II.**

The Avanti Door Group owns and is successor in interest to the business formerly known  
as E. M. Allen Supply Co.

**III.**

Defendant Genworth Life and Annuity Insurance Company is the successor to FIRST  
COLONY LIFE INSURANCE.

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## IV.

The Defendants may have done business under other corporate names so Plaintiff has included DOE Defendants I through V herein and will seek leave to amend this Complaint to properly name any other Defendants as may be appropriate under the circumstances.

## V.

On or about May 19, 1989, Plaintiffs tendered a payment in the amount of \$1,230.00 to purchase a policy of Life Insurance with a payout provision of \$500,000.00 on the life of Craig A. Leonard, who was the President of E. M. Allen Woodworking Supply, and thereafter The Avanti Door Group.

## VI.

The premium paid by Plaintiff to Defendants for 1990, policy year one, was \$3,060.00.

## VII.

The premium paid by Plaintiff to Defendants for 1991 was \$3,895.00.

## VIII.

The premium paid by Plaintiff to Defendants for 1992 was \$4,835.00.

## IX.

The premium paid by Plaintiff to Defendants for 1993 was \$5,715.00.

## X.

The premium paid by Plaintiff to Defendants for 1994 was \$6,695.00.

## XI.

The premium paid by Plaintiff to Defendants for 1995 was \$8,185.00.

## XII.

The premium paid by Plaintiff to Defendants for 1996 was \$9,995.00.

## XIII.

The premium paid by Plaintiff to Defendants for 1997 was \$12,130.00.

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1 XIV.

2 The premium paid by Plaintiff to Defendants for 1998 was \$14,505.00

3 XV.

4 The premium paid by Plaintiff to Defendants for 1999 was \$16,495.00.

5 XVI.

6 The premium paid by Plaintiff to Defendants for 2000 was \$18,695.00

7 XVII.

8 The premium paid by Plaintiff to Defendants for 2001 was \$21,045.00.

9 XVIII.

10 The premium paid by Plaintiff to Defendants for 2002 was \$23,520.00

11 XIX.

12 The premium paid by Plaintiff to Defendants for 2003 was \$25,940.00.

13 XX.

14 The premium paid by Plaintiff to Defendants for 2004 was \$27,525.00.

15 XXI.

16 The premium paid by Plaintiff to Defendants for 2005 was \$30,610.00.

17 XXII.

18 The premium paid by Plaintiff to Defendants for 2006 was \$33,575.00.

19 XXIII.

20 The premium paid by Plaintiff to Defendants for 2007 was \$36,745.00.

21 XXIV.

22 The premium paid by Plaintiff to Defendants for 2008 was \$40,660.00.

23 XXV.

24 The premium due from Plaintiff to Defendants for 2009 was \$45,310.00.

25 XXVI.

26 Plaintiff received an invoice for \$45,310.00 in 2009 from Genworth Life and Annuity  
27 Insurance.

1 XXVII.

2 Defendants Genworth failed to advise Plaintiff that it had the option of utilizing its cash  
3 surrender value to make the premium payment.

4 XXVIII.

5 Defendants Genworth failed to advise Plaintiff that it had the option of borrowing against  
6 the policy to make the premium payment.

7 XXIX.

8 Defendants Genworth knew that the named insured, Craig A. Leonard, was in poor health  
9 and, in fact, repeatedly raised the life insurance premium on Mr. Leonard's life.

10 XXX.

11 An employee of Morrissey Insurance Services contacted First Colony Insurance on or  
12 about December 1, 2009 and was told that there was no cash value on Mr. Leonard's policy.

13 XXXI.

14 Morrissey Insurance Services wrote to Defendants, Genworth Life Policy Service, on  
15 behalf of the Plaintiff requesting written information as to whether or not Craig Leonard's Life  
16 Insurance Policy had cash surrender value and if not, for an accounting of when and how the cash  
17 value had been used.

18 XXXII.

19 Morrissey Insurance contacted Defendants to inquire as to the Plaintiff's options under the  
20 policy, but Defendants failed and refused to respond to the inquiries made on Plaintiff's behalf.

21 XXXIII.

22 During 2009, Plaintiff's CPA began contacting Defendants Genworth to inquire about a  
23 policy loan against the cash value of the policy, but Defendantss failed and refused to respond to  
24 her inquires.

25 XXXIV.

26 The policy itself states on its face that cash values are not available until the sixteenth  
27 policy year or thereafter.

1 XXXV.

2 The 2009 premium of \$45,310.00 was invoiced during the twentieth year of the policy.

3 XXXVI.

4 The policy had significant cash value at the time of the premium coming due.

5 XXXVII.

6 The Plaintiff was not allowed to borrow against the cash value of the \$500,000.00 policy  
7 prior to Craig A. Leonard's death because of Defendants's tactics.

8 XXXVIII.

9 The Defendants owed Plaintiff a duty to properly inform Plaintiff of its rights under the  
10 policy.

11 XXXIX.

12 On October 17, 2010, Craig A. Leonard died.

13 FIRST CLAIM FOR RELIEF

14 (Breach of Implied Covenant of Good Faith and Fair Dealing)

15 XXXX.

16 The Plaintiff repeats and realleges all allegations contained in paragraphs One through  
17 Thirty-nine of the Complaint and incorporates by reference those allegations herein.

18 XXXXI.

19 The Defendants as the insurer, owed a fiduciary duty to the Plaintiff, its insured.

20 XXXXII.

21 The Defendants owed Plaintiff a duty of good faith and fair dealing.

22 XXXXIII.

23 The Defendants breached its fiduciary duty to the Plaintiff.

24 XXXXIV.

25 The Defendants breached the implied covenant of good faith and fair dealing contained in  
26 the policy contract with respect to the Plaintiff.

XXXXV.

Due to the Defendantss failure to timely respond to the Plaintiff's inquiries made by Plaintiff's agents, the insurance agent of Plaintiffs filed a Complaint with the Insurance Commissioner of the State of Nevada.

XXXXVI.

The Nevada Insurance Commissioner ordered the Defendantss to respond to Plaintiff's inquiries.

XXXXVII.

Because the Defendants breached its fiduciary duties to the Plaintiff and breached the implied covenant of good faith and fair dealing, the Plaintiff was damaged in that it has not been paid the face value of the policy on Craig A. Leonard's life.

XXXXVIII.

Defendants's breaches of fiduciary duty and the implied covenant of good faith and fair dealing were malicious and oppressive.

XXXXIX.

The Plaintiff requested that the Defendants mediate this dispute with Plaintiff and Defendants failed and refused to do so which necessitated the filing of this Complaint.

## SECOND CLAIM FOR RELIEF

(Breach of Contract)

L.

The Plaintiff repeats and realleges all allegations contained in Paragraphs One through Forty-nine of the Complaint and incorporates by reference those allegations herein.

LI.

The Plaintiff and Defendants were parties to a contract of life insurance.

LII.

The Plaintiff complied with the terms of the life insurance contract and was entitled to the benefits of the contract.

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LIII.

Benefits of the life insurance contract included the right to access the cash surrender value to make premium payments to keep the policy in good standing; and the right to borrow against the policy.

LIV.

The Defendants breached the life insurance contract by failing to respond timely to the Plaintiff's agents' inquiries concerning the cash surrender value of the life insurance policy and the possibility of a policy loan.

LV.

By virtue of its breaches of the life insurance contract, Defendants deprived the Plaintiff of the benefits of the life insurance contract, including the right to collect face value upon the death of the named insured.

LVI.

The Plaintiff has sustained damages in the amount of \$500,000.00 by virtue of Defendants's breaches of the life insurance contract.

THIRD CLAIM FOR RELIEF

(Unjust Enrichment)

LVII.

The Plaintiff repeats and realleges all allegations contained in Paragraphs One through Fifty-six of the Complaint and incorporates by reference those allegations herein.

LVIII.

The Plaintiff has paid to the Defendants life insurance premiums which total in excess of \$345,000.00.

LIX.

The Defendants has earned investment income on those premiums since policy inception in 1989.

LX.

The Defendants has been unjustly enriched by virtue of the circumstances of this life insurance contract.

LXI.

The Defendants should be required to disgorge the amounts for which it has been unjustly enriched.

WHEREFORE, Plaintiff prays for Judgment against Defendants as follows:

- 1) For compensatory damages in excess of \$10,000 for Defendants's breaches of contract;
- 2) For compensatory damages in excess of \$10,000 for Defendants's breaches of fiduciary duty;
- 3) For damages in excess of \$10,000.00 on Plaintiff's claim for unjust enrichment;
- 4) For exemplary damages in excess of \$10,000 for Defendants's breaches of the implied covenant of good faith and fair dealing;
- 5) For Costs of this action;
- 6) For reasonable attorneys fees;
- 7) For such other and further relief as this Court should deem proper.

DATED this 14 day of October, 2014.



ELIZABETH J. FOLEY  
601 So. Rancho Drive, Suite A-1  
Las Vegas, Nevada 89106  
Phone: (702) 363-2323  
Fax: (702) 380-4035  
Attorney for Plaintiff

ELIZABETH J. FOLEY  
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DEMAND FOR JURY TRIAL

Plaintiff, The Avanti Door Group, Inc. hereby demands trial by jury of all issues so triable set forth in the Complaint.

  
ELIZABETH J. FOLEY

ELIZABETH J. FOLEY  
LAWYER, LTD.  
601 S. Rancho Drive, Suite A-1  
Quail Park II  
Las Vegas Nevada 89106  
Phone: (702) 363-2323 • Fax: (702) 380-4035